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SUBJECT: SRI LANKAN PARLIAMENT PASSES NEW IPR LAW

Refs: A)Colombo 1160, B)COLOMBO 257, C)02 Colombo 2196

1. Summary: The Sri Lankan Parliament approved an Intellectual Property Rights (IPR) law on July 25, 2003. It will come into effect when the Speaker of the Parliament signs the bill, expected in August. The new IPR law is WTO TRIPS compliant. It provides for improved coverage, and contains provisions for an enhanced enforcement regime, which would address a major weakness in the existing law. End Summary

2. On July 25, the Sri Lankan Parliament approved a long-anticipated IPR law by a vote of 99-59. It will come into effect when the Speaker of the Parliament signs the bill, currently expected to happen in August. Passage was delayed approximately two months by a court case, which resulted in amendments to allow compulsory licensing and parallel imports. These amendments were required by the Supreme Court, which ruled that certain provisions in the bill on patents were inconsistent with the Constitution and violated fundamental rights of the people of Sri Lanka. The petitioners, an AIDS activist and a think-tank, stated that the bill allowed patent owners, especially pharmaceutical companies, to control the supply and prices of drugs.

3. Parliamentary debate on the bill lasted two days. On the first day, several Members of Parliament, including opposition members, generally spoke in favor of the bill, stressing the need to protect copyrights, especially of local artists. On the last day of the vote, however, the opposition members of the People's Alliance and JVP opposed the bill, saying the bill should be re-published and presented for public comment again before parliamentary approval. The opposition claimed the government was introducing several last minute changes, and alleged that the GSL was not carrying out the Supreme Court directions properly.

4. The Government maintained that it was amending only the clauses suggested by the Court and there was no need for further delays. According to the Director General of Intellectual Property of Sri Lanka, Dr. D.M. Karunaratne, the Attorney General had approved the amendments to the legislation, in accordance with the Court ruling. Karunaratne believes the opposition members did not fully understand the legal changes made in the bill. Government officials and other critics blame the opposition reaction on divisive politics rather than on any technical or legal grounds.

5. The new IPR law is WTO TRIPS compliant. It protects and governs copyrights of artistic, literary and scientific work, related rights, industrial designs, patents, marks and trade names, layout designs of integrated circuits, unfair competition, undisclosed information and geographical information. The preparation of the new law took years, under several governments, and was actively promoted by the Embassy and official USG visitors (see reftels). Several US parties, including USAID consultants and the Motion Picture Association of America (MPAA), reviewed the draft law and provided comments. Sri Lanka still needs to ratify and conform to the recent WIPO Performances and Phonograms Treaty (WPPPT) and the WIPO Copyright Treaty (WCT). According to Dr. Karunaratne, certain provisions in the new law, such as communication to the public, conform to some provisions in these treaties, but not all.

6. The new law provides for an improved enforcement mechanism. Currently, enforcement is a serious problem as is the lack of public awareness of IPR. The Government does not act as an enforcer of IPR laws, partially due to weaknesses in the existing law. For example, under copyrights, the previous law covered only the reproduction of works, not the sale, rental or export of counterfeits. The new IPR law brings copyright law up to WTO and Bern Convention requirements, with expanded relief including powers to impound or destroy copies, packaging and implements used for making copies, and enhanced fines. It also brings amendments to the Customs Ordinance, allowing Customs to detect import and export of counterfeit products, which will now be prohibited. At present, aggrieved parties must, on their own, seek

redress of any IPR violation through the courts, often a slow process.

17. Local agents of reputed US and other international recording, software development and motion picture companies continue to complain that lack of IPR protection is damaging their businesses. The Embassy, along with key industry players including the IFPI, continues to lobby for improvements in Sri Lanka's IPR regime. The Embassy has convened a group of US companies adversely affected by IPR violations to engage the government on enforcement and to enhance public awareness.

Entwistle